

30 August 2022

Fire Funding Review
Te Tari Taiwhenua
Internal Affairs

FOA: Harry Boam; Jayne Beggs and Michael Macdonald

By Email: FireFundingReview@dia.govt.nz

Tēnā koutou

Targeted engagement: Fire and Emergency Levy Exemptions

Thank you for your email and attachment of 8 August 2022 and for the opportunity to meet with you via Zoom on 16 August 2022.

We note that you have been asked by the Ministers of the Department of Internal Affairs ('DIA') to advise them on whether the Fire and Emergency Levy (the 'Levy') exemption in relation to "art and items in cultural heritage body collections" (together 'Collection Objects') should be included as an exemption in future Levy regulations and bill amendments.

The reason the DIA has given for discontinuing the exemption is that the Collection Objects and the galleries, libraries, museums and other heritage bodies (together the 'GLAM Organisations') that hold them benefit from the services provided by the Fire and Emergency Services ('FENZ'), but the DIA acknowledges that the level of the Levy in relation to the Collection Objects "may be highly disproportionate to the potential benefit" the GLAM Organisations receive from FENZ due to the high insurance value of the Collection Objects.

Museums Aotearoa

Before we respond to the issue the DIA has raised, it should be noted that Museums Aotearoa is the professional membership organisation for museums and those who work in or have an interest in museums and the museum sector. The 'museum sector' includes museums, public art galleries, historical societies, science centres and historic places open to the public. Museums Aotearoa members include these institutions and people who work within them and individuals connected or associated with the arts, culture and heritage sector in New Zealand. The museum sector comprises 476 institutions throughout New Zealand.

Museums Aotearoa seeks to promote excellence in museums and galleries and support the ongoing development of a vibrant, creative and relevant sector.

Public museums and galleries:

- care for and provide access to and education about New Zealand's culture and heritage for current and future generations. Our members hold our national collections of visual arts, decorative arts, documentary history, military objects and collections, social history, technology, natural history, taonga Māori, archaeology and ethnology. Much of our museum and gallery activity takes place in heritage buildings, in locations dictated by historic significance and locations; and

- make essential contributions to education, tourism, social cohesion and our sense of nationhood.

It should be noted that this response was sent to institutional members of Museums Aotearoa for their feedback before it was sent to you.

Our Response

As you are aware from our meeting on 16 August 2022, Museums Aotearoa, on behalf of its members, and a wide range of GLAM Organisations spent a considerable amount of time between 2015 and 2017 persuading the Select Committee that Collection Objects should be exempt from the Levy.

Our submissions were accepted by the Select Committee and the exemption was recommended to the Cabinet Economic Growth and Infrastructure Committee who agreed on 26 July 2017 that “regulations be made to exempt the followingproperty from the levy...5.14 collections of public museums and galleries..” [see EGI Minute of Decision EGI-17-MIN-0195].

The case for an exemption was strong; we are shocked and disappointed that it could be removed from the list of ongoing exemptions now being proposed by DIA. We submit that the exemption should be embodied in the Act, the amendment bill and the associated Regulations.

Why was the Exemption Granted

The reasons that were provided to the Select Committee between 2015 and 2017 and to the DIA in 2020 in support of the exemption were as follows:

1. The GLAM Organisations acknowledged the need to ensure adequate resourcing of FENZ and that these services contributed to the sector through emergency and disaster preparedness, response and recovery.
2. The GLAM Organisations noted that the proposed legislation (and the Act) did not address the issue of non-insured property, meaning those who are insured are subsidising FENZ services for those who are not.
3. Most GLAM Organisations were insured, and it was estimated that a Levy could significantly increase a large museum or galleries insurance cost by 300% when these costs already accounted for 3 to 6% of their operational expenditure.
4. Most, if not all, GLAM Organisations are not for profit public entities. Outside of New Zealand’s national museum (Te Papa) and the service museums (Army, Navy, Air Force and Police) that are funded through central government, most of our large and medium GLAM Organisation receive over 60% of their funding from local councils.
5. The GLAM Organisations submitted that the principles outlined in the 2015 Fire Service Review (and now incorporated in the Act and forming the basis of the DIA’s review) namely **universal** and **equitable** were inequitable to the GLAM Organisations, especially when compared to commercial entities, for the following reasons:
 - (a) The GLAM Organisations hold significant Collection Objects, for the benefit of Aotearoa New Zealand and its residents, which have high value and appreciate over time. The value of the Collection Objects has no relationship to the potential call on FENZ services.

- (b) As publicly funded and/or volunteer-based organisations primarily funded through public sources, the insured/declared value of the GLAM Organisations Collection Objects have little relationship to their ability to pay (i.e.; the Collection Objects are not used or traded to make a profit).
 - (c) A number of the GLAM Organisations have anomalous and historic discrepancies as to their location, their ability to secure public or private funding and the Collection Objects they hold – they are where they are, and they are the custodians of the Collection Objects without reference to insurance value or their ability to use them to generate funds.
 - (d) A GLAM Organisation’s ability to raise revenue is not related to the insured/declared value of their buildings or Collection Objects.
 - (e) A GLAM Organisation’s ability to replace/reinstate Collection Objects is not related to their insured/declared value, especially in relation to Collection Objects which are irreplaceable.
 - (f) Collection Objects tend to have disproportionately high value in relation to the buildings and other assets held or owned by the GLAM Organisations.
 - (g) Collection Objects appreciate, rather than depreciate, in value over time and their appreciating value has no relationship to the GLAM Organisations need for FENZ services.
6. The application of a universal Levy has serious difficulties and implications in relation to the valuation of Collection Objects and involves issues and concepts that are unique to the GLAM sector in relation to what is meant by 'value' for insurance and Levy purposes. These concepts include:
- (a) *Irreplaceability*: if Collection Objects were destroyed there would usually be no way of replacing them.
 - (b) *Incomparability*: the impossibility of determining the market value of Collection Objects that have never been on the market and/or for which there is no active or meaningful market.
 - (c) *Inalienability*: Collection Objects that are held by virtue of kaitiakitanga in perpetuity and have no market value because they can never be sold or transferred except to another public kaitiaki entity.
 - (d) *Offence*: the setting of the value on a Collection Object that is not only impossible but also offensive (e.g., the taonga Uenuku held at Te Awamutu Museum).
 - (e) *Compliance*: the expense of establishing a 'value' of a disparate or specialist collection, which often requires a range of international expertise and considerable time and financial resource (e.g., natural history 'type specimens', international art, antiquities, unique items), the cost of which is disproportionate to the benefit of establishing the valuation, especially when that value has a wide margin of error.
7. Any Levy is likely to impose significant financial hardship on the GLAM Organisations, which would need to be passed on to their funders and/or communities. This financial hardship could force some GLAM Organisations to under value, under insure or not insure their Collection

Objects. It could also encourage the GLAM Organisations with highly protected and managed structures to self-insure which carries a different set of risk especially in relation to high valued items.

8. GLAM Organisations have a vested interest in taking every possible measure to avoid damage to their buildings and Collection Objects and most have efficient fire monitoring, sprinkler, HVAC and security systems and well established and sophisticated disaster and emergency plans.
9. The Bill (and now Act) does not factor in, like other levy-based legislation, the mitigation measures the GLAM Organisations have in place and the relatively low need for FENZ.

All of these reasons are just as relevant, as they were in 2015 and 2017 and 2020, especially in the light of the adverse impact the COVID has had on the GLAM Organisations activities, finances and funding.

Clause 25A and the Transitional Provisions of the Act

Schedule 1 of the Act sets out amongst other things the transitional provisions and exemptions. Clause 25A of the Act sets the exemption in relation Collection Objects and that exemption remains in place until section 80 to 140 of the Act come into force on or before 1 July 2024 (see section 2 and clause 23 of the Act).

We note that the exemption in relation to Collection Objects was not included anywhere else in the Act and in particular, in sections 80 to 140. We therefore submit that the Act should be amended to include the exemption, and failing that, it should be included in the Regulations in line with the Select Committee recommendations as approved by Cabinet in 2017.

Application of Purpose to Exemptions

We note from the information you have provided that when determining exemptions you need to consider the purpose of the Levy, according to certain principles in the Act.

We note that the purpose of the Levy is to:

1. Provide a **stable** source of funding for FENZ.
2. Ensure that the cost of FENZ is **universally** shared amongst those who potentially benefit from FENZ's services.
3. Ensure that the funding burden is **equitable** between the policyholders paying the Levy considering the potential benefit they could receive from FENZ and the risk of the policyholders' activities.
4. Ensure that the amount the policyholder pays is **predictable** and FENZ knows how much they are going to receive.

While we understand the desire to provide FENZ with a **stable** source of funding and can see how the principles are appropriate when applied to commercial and private entities, we submit, in addition to points covered in section 5 above, that the application of these principles to Collection Objects is inequitable. Further:

1. The funding cost of FENZ is already being **universally** covered by the GLAM Organisations via the levies they pay on the insurance for their buildings and non-Collection Objects.

2. The levies currently being paid by the GLAM Organisations adequately covers any potential benefit they could receive from FENZ, especially given the low risk of the GLAM Organisations activities and the steps they take to mitigate and minimise fire and other risks through building design, fire detection, protection and suppression systems. In many cases this is to a higher standard than commercial enterprises due to the irreplaceable nature of their Collection Objects and public accountability.
3. Not including the exemption in relation to Collection Objects would significantly increase the Levy paid by the GLAM Organisations, as the insurance values of those Collection Objects could be significant. For example, the insurance value of the Museum Of Transport And Technology Collection Objects are conservatively estimated to be \$34.7 million and there are several other GLAM Organisations with Collection Objects worth considerably more than that.

This would mean that the GLAM Organisations would end up paying higher levies than many commercial organisations, for the same benefits from FENZ, despite the significantly lower risk of the GLAM Organisations' operations. We submit that this would be **inequitable**, an outcome that the DIA acknowledged and highlighted in the document you provided to us and acknowledged during our meeting with you.

4. It should also be noted that Collection Objects are held by the GLAM Organisations, which are not for profit entities for the benefit of all New Zealanders, and as such they are effectively the nation's custodians. It would in our view, be **inequitable** to expect the GLAM Organisations to pay a Levy in these circumstances. The concept of **public good** also needs to be considered in this context.
5. Trying to ascertain the insurance value of Collection Objects is notoriously difficult due to their rarity and/or cultural significance and their values can vary widely from year to year. This means that it is difficult if not impossible to **predict** the amount of the Levy payable by a GLAM Organisation, which places an unfair and **inequitable** burden on them, especially if, in many cases, they have to work out their budgets and apply for funding 12 to 18 months in advance and before the insurance value and the associated Levy for the Collection Objects is known. Major exhibitions are planned and negotiated years in advance and they would be very vulnerable to future Levy changes.

Cap on the Levy

During our meeting you suggested a cap on the Levy that was payable in relation to Collection Objects. We have considered and rejected this option as it does not address the concerns outlined above and even if the cap was set at 0% there is no guarantee that it would not be increased at a later date. Having a cap that could be varied at a later date would add uncertainty, and mean the GLAM Organisations would be faced with the ongoing burden and onerous task of having to defend the retention of a 0% cap on a regular basis.

Conclusion

Any increase in the insurance costs of the GLAM Organisations would have a detrimental impact on their operations. If the exemption is not included in the amendment bill and/or regulations, there is a significant risk that a number of GLAM Organisations would either close or be forced to under insure or not insure their Collection Objects due to the adverse impact the Levy would have on their operational costs.

The risk of no or low insurance could also discourage donors from gifting rare and/or high value objects to GLAM Organisations.

The Levy, even with a low cap, would increase the touring costs of exhibitions developed by the GLAM Organisations and the cost of repatriating taonga from overseas. All of these factors would reduce the public's access to their own culture and heritage.

Given the financial constraints on the GLAM Organisations it is unlikely that they would be able to 'self-insure' without additional support from their primary funder. Further, in the unlikely event of something happening to uninsured collections, it could expose the organisations in question, the DIA and the Ministers to public and professional criticism and scrutiny.

For the reasons outlined in this submission we respectfully request that:

The transitional exemption in relation to Collection Objects, as set out in clause 25A of the Act, is included in the new group of proposed exemptions and is either incorporated into the Act or the associated Regulations, so that we do not have to keep revisiting this issue as the reasons for retention of the exemption will not change over time.

We would like the opportunity to address the Ministers in relation to this matter so that that they are aware of the GLAM Organisations position and our concerns for the accessibility, preservation and protection of Collection Objects if the exemption is discontinued.

Finally, it should be noted that this submission has been considered and is supported by a significant number of the GLAM Organisations and in particular those listed at the end of this letter.

Nāku noa, nā

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Supported by:

1. Museum Of Transport And Technology (MOTAT)
2. Museum of New Zealand Te Papa Tongarewa
3. Auckland War Memorial Museum
4. Otago Museum
5. Christchurch Art Gallery Te Puna o Waiwhetū
6. Dunedin Public Art Gallery
7. Canterbury Museum
8. Nelson Provincial Museum
9. Tairāwhiti Museum
10. Waitaki Museum and Archive
11. Forrester Gallery
12. Whirinaki Whare Taonga
13. Toitū Otago Settlers Museum
14. Lan Yuan, Dunedin Chinese Garden
15. Akaroa Museum
16. Waitangi Treaty Grounds

17. Te Tuhi
18. Waikato Museum
19. Southland Museum & Art Gallery Niho O Te Taniwha
20. Ashburton Art Gallery and Museum
21. Hokitika Museum
22. The New Zealand Portrait Gallery Te Pūkenga Whakaata
23. Howick Historical Village
24. Marlborough Heritage Trust and Marlborough Museum
25. Air Force Museum of New Zealand
26. Kauri Museum
27. The New Zealand Aviation Museum Trust
28. Te Whare Taonga o Taketake – Whakatāne Museum Collections and Research
29. South Canterbury Museum
30. Experience Wellington: City Gallery Wellington, Nairn Street Cottage, Cable Car Museum, Wellington Museum and Carter Observatory
31. The Suter Art Gallery
32. Whangārei Art Museum and Hundertwasser Art Centre
33. The Govett-Brewster Art Gallery | Len Lye Centre
34. The New Zealand Police Museum
35. Stardome & Observatory
36. MTG Hawkes Bay
37. Te Uru Waitakere Contemporary Gallery
38. Tātaki Auckland Unlimited
39. Auckland Art Gallery
40. New Zealand Maritime Museum
41. Puki Ariki
42. Pātaka Art + Museum
43. Waitomo Caves Museum
44. Te Awamutu Museum

CC: Manatū Taonga Ministry for Culture & Heritage
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